J & W Drywall, Lather & Plastering Co., Inc.; J & W Drywall Contractors, Inc.; J & W Drywall Plastering Co., Inc.; and Willie Williams *and* Painters District Council No. 22, International Brotherhood of Painters and Allied Trades, AFL–CIO–CLC. Case 7–CA–32705

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on December 18, 1991, the General Counsel of the National Labor Relations Board issued a complaint, compliance specification, order consolidating complaint and compliance specification, and notice of consolidated hearing on February 13, 1992, against J & W Drywall, Lather & Plastering Co., Inc., J & W Drywall Contractors, Inc., J & W Drywall Plastering Co., Inc., and Willie Williams, the Respondents, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondents failed to file a timely answer.

On April 24, 1992, the General Counsel filed a Motion to Transfer Case to the Board and for Default Summary Judgment, with exhibits attached. On April 29, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Thereafter, the Respondents filed an answer to the General Counsel's motion and requested the Board to accept an attached answer to the complaint and compliance specification. The Respondents also filed a response to the Notice to Show Cause. The General Counsel filed a reply to the Respondents' answer to the General Counsel's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Section 102.56 of the Board's Rules and Regulations provides that if an answer is not filed within 21 days from the service of the compliance specification the Board may find the specification to be true. The consolidated complaint and compliance specification states that unless an answer is filed within 21 days of service, ''all of the allegations in the Complaint and Compliance Specification shall be deemed to be admitted true and may be so found by the Board.'' Further, the General Counsel alleges in support of the Motion for Default Summary Judgment that the acting Regional attorney, by letter dated March 11, 1992, notified the Respondents that unless an answer was received by March 25, 1992, a Motion for Default Judgment would be filed.

The Respondents deny receiving copies of the charge and consolidated complaint and compliance specification, or warning letter from the acting Regional attorney until they received through the regular mail the Motion for Default Summary Judgment, with attached copies of those earlier documents. They further deny refusing to accept certified mail of the charge and the consolidated complaint and compliance specification. They claim that their office was closed for Christmas when they allegedly refused to accept service of the charge by certified mail and that their secretary was on jury duty when they allegedly refused to accept service of the consolidated complaint and compliance specification by certified mail. The Respondents contend that ''a certified letter is in practice the method least likely to give actual notice to someone and that if the General Counsel really wants Respondent to receive something they should also accompany it with a first class mailing that will actually be received.''

Contrary to the Respondents' contention, Section 102.113 of the Board's Rules and Regulations specifies that charges, complaints, ''and other process and papers of the Board'' may be served by certified mail and that a return post office receipt shall be proof of service by this method. The General Counsel's Motion for Default Judgment and his reply to the Respondents' answer to the motion collectively allege that the Respondents refused service by properly addressed certified mail of the charge on December 19, 1991, of the consolidated complaint and compliance specification on February 14, 1992, of the acting Regional attorney's warning letter on March 12, 1992, and of the Motion for Default Judgment on April 23 and May 1, 1992. In support of this allegation, the General Counsel has submitted affidavits of service and copies of the certified mail envelope for each legal document. All envelopes bear Postal Service marks indicating that the addressee ''refused'' to accept them.

It is well established that a refusal to accept certified mailing of legal process cannot serve to defeat the purposes of the Act. E.g., *Fletcher Oil Co*., 299 NLRB No. 77, slip op. at 2 fn. 1 (Aug. 23, 1990) (not reported in Board volumes). The General Counsel has submitted sufficient prima facie proof of the allegation that the Respondents refused to accept service by certified mail of the charge and the consolidated complaint and compliance specification, and the warning letter. The Respondents' bare denial of these allegations fails to rebut the prima facie proof or to create

an issue of fact warranting a hearing.[1] Furthermore, the General Counsel alleges, with supporting documentary proof, that the consolidated complaint and compliance specification and the acting Regional attorney's warning letter were also sent by regular mail, the mode of service which the Respondents admit is reliable and by which the Respondents admit receiving the Motion for Default Summary Judgment. The failure of the Postal Service to return documents served by regular mail indicates actual receipt of those documents by the Respondents. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987). We therefore find that the Respondents were properly served copies of the charge and the consolidated complaint and compliance specification, and the warning letter.

In the absence of good cause being shown for the failure to file a timely answer, we deny the Respondents' request to file a belated answer and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondents, Michigan corporations, are engaged in the construction industry as drywall installation, plastering, and lathing contractors with an office and place of business in Detroit, Michigan. At all times material, the Respondents have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public and to their customers as a single-integrated business enterprise. The complaint alleges, and we find, that the Respondents are, and at all material times have been, a single employer within the meaning of the Act.

During the year ending December 31, 1991, the Respondents purchased and caused to be transported and delivered at their place of business and/or jobsites located in the State of Michigan goods valued in excess of $50,000 from other enterprises, including Dale Enterprises, Inc., located within the State of Michigan, each of which other enterprises had received these goods directly from points outside the State of Michigan.

We find that the Respondents are a single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union, Painters District Council No. 22, International Brotherhood of Painters and Allied Trades, AFL–CIO–CLC, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondents constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeymen, apprentices and foremen employed to do drywall, painting, paperhanging and decorating within the geographic jurisdiction of Painters District Council No. 22, but excluding guards and supervisors as defined in the Act.

At all times since January 2, 1989, the Union has been and is the exclusive collective-bargaining representative of the Respondents' unit employees within the meaning of Section 9(a) of the Act.

On or about January 2, 1989, the Respondents and the Union executed a collective-bargaining agreement which was to remain in effect until May 31, 1989, and, unless properly terminated, was automatically renewed from year to year thereafter. Since about September 1991, the Respondents have failed to adhere to the terms of the collective-bargaining agreement by failing to make various monthly fringe benefit contributions and by refusing to submit to an audit. The Respondents engaged in this conduct without the Union's consent and without providing timely notice of a desire to terminate or modify the contract.

In addition, since about November 15, 1991, the Respondents have failed and refused to comply with the request of the Painters Insurance, Pension, and Vacation Funds, acting at the behest of and as an agent of the Union, for payroll records for the period from October 1, 1990, to September 30, 1991. This information is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

We find that the Respondents violated Section 8(a)(5) and (1) of the Act by failing to abide by the terms of a current collective-bargaining agreement and by refusing to provide information requested by the Union. We further find that the amounts owed by the Respondents for their unlawful failure to make fringe benefit fund payments are as stated in the compliance specification, and we shall order the Respondents to pay those amounts.

CONCLUSION OF LAW

By failing to abide by the terms of a current collective-bargaining agreement with the Union requiring the Respondents to make monthly periodic contributions to fringe benefit funds and to submit to an audit, and by failing to provide the Union or the funds, acting as the

[1] We note that the respondents refused to accept service of legal process by certified mail in *J & W Drywall Contractors*, 306 NLRB No. 94 (Feb. 28, 1992) (not reported in Board volumes).

Union's agent, with relevant requested bargaining information, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, we shall order the Respondents to abide by the terms of the January 2, 1989 collective-bargaining agreement, including the contractual provisions for fringe benefit fund contributions and audits. Further, we shall order the Respondents to submit payroll records to the Painters Insurance, Pension, and Vacation Funds payroll records for the period from October 1, 1990, to September 30, 1991. Finally, in accord with the terms of the compliance specification, we shall order the Respondents to make contractual fringe benefit fund payments in the amount of $26,429.12, plus any monthly amounts accruing after January 1992 at a rate of $4,211.56 per month plus interest until the Respondent fully complies with its benefit fund contribution obligations.

ORDER

The National Labor Relations Board orders that the Respondents, J & W Drywall, Lather & Plastering Co., Inc., J & W Drywall Contractors, Inc., J & W Drywall Plastering Co., Inc., and Willie Williams, Detroit, Michigan, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Painters District Council No. 22, International Brotherhood of Painters and Allied Trades, AFL–CIO–CLC as the exclusive representative of employees in the unit described below, by failing to adhere to the terms, including those regarding fringe benefit fund payments and audits, of a collective-bargaining agreement, effective from January 2, 1989, until May 31, 1989, and renewed annually thereafter, absent proper notice of termination. The unit is:

> All journeymen, apprentices and foremen employed to do drywall, painting, paperhanging and decorating within the geographic jurisdiction of Painters District Council No. 22, but excluding guards and supervisors as defined in the Act.

(b) Refusing to provide the Union or the Painters Insurance, Pension, and Vacation Funds, when acting as the Union's agent, with requested information that is relevant to the Union's duties as exclusive collective-bargaining representative of unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Abide by the terms of the current collective-bargaining agreement with the Union, including provisions for monthly fringe benefit fund payments and for submitting to an audit.

(b) Make the contractual benefit funds whole, in the manner set forth in the remedy section of this decision, by reimbursing them for losses resulting from the unlawful failure to make contractually required benefit fund payments.

(c) Provide the Union with the payroll information which the Painters Insurance, Pension, and Vacation Funds, acting as the Union's agent, requested on and after November 15, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Detroit, Michigan, and at jobsites where unit employees are working, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Painters District Council No. 22, International Brotherhood of Painters and Allied Trades, AFL–CIO–CLC as the exclusive bargaining representative of our employees in the unit described below, by failing to adhere to the terms, including those regarding fringe benefit fund payments and audits, of a collective-bargaining agreement with the Union. The unit is:

> All journeymen, apprentices and foremen employed to do drywall, painting, paperhanging and decorating within the geographic jurisdiction of Painters District Council No. 22, but excluding guards and supervisors as defined in the Act.

WE WILL NOT refuse to provide the Union or the Painters Insurance, Pension, and Vacation Funds, when acting as the Union's agent, with requested information that is relevant to the Union's duties as exclusive collective-bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL abide by the terms of our current collective-bargaining agreement with the Union, including provisions requiring us to make monthly contributions to various employee fringe benefit funds and to submit to an audit.

WE WILL make the benefit funds whole for our failure to make timely contributions by paying them the amounts specified by the National Labor Relations Board, with interest.

WE WILL provide the Union with payroll records which it requested on and after November 15, 1991.

J & W DRYWALL, LATHER & PLASTERING CO., INC., J & W DRYWALL CONTRACTORS, INC., J & W DRYWALL PLASTERING CO., INC., AND WILLIE WILLIAMS